

Exhibit "A"

October 5, 2004

U.S. Department of Justice
Office of Information and Privacy
Flag Building, Suite 570
Washington, DC 20530

RE: FOIA/PA Appeal No. 04-2641
Original FOIA/PA request No. 2004-07942

Dear Sirs/Madam,

This is a follow-up of the above mentioned request/appeal. I sent the appeal, dated July 31, 2004, to your office and received confirmation of receipt on August 12, 2004. Since that time, I have heard nothing.

While I realize there may be a backlog of request and it takes a certain amount of time to process each request. But too, I realize that the statutory time limit Congress has allotted in order to process request is 20 working days, although extended time has been granted. As stipulated in 5 USC §552(a)(6)(B), the extension of time is limited to an additional ten (10) working days; thus I request that you abide by this section. I do not wish to limit the scope of this request. In addition, I fail to understand how this qualifies as an "unusual circumstance".

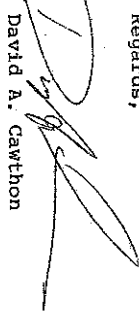
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Also, as stated in Washington Research Project, Inc v. Dept. of Health, Education and Welfare, 366 F.Supp. 929 (DC Dist. 1973), career and personnel data held is not exempt, including an analysis of the professional competence of an employee written into the agency report. Also according to Chamberlain v. Alexander, 419 F. Supp. 235 (SD Ala. 1976), documents, including a letter (or other such information) of reprimand, is not exempt from disclosure.

-2-
For the above mentioned reasons, I request that you expedite requested information as soon as possible.

Thank you in advance for your attention in this matter.

Regards,


David A. Cawthon

87244-020
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512-4500

FILED

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

05 0567

July 31, 2004

United States Department of Justice
Office of Information and Privacy
Flag Building, Suite 570
Washington, DC 20530

Re: FOIA/PA Request No. 2004-07942

Dear Sir/Madam,

Please consider this a formal appeal in the above referenced case, Washington Post Co., 456 U.S. 595, 599, 102 S.Ct. 1957, 1960, 72 Ed.2d 358 (1982), held that: "Congress's purpose in enacting Exemption 6 was to protect individuals from the harm that could result from unnecessary public dissemination of personal information." See also, Department of Air Force v. Rose, 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 1 L.Ed.2d 11 (1976), which stated that the purpose of Exemption 6 is to "provide for the confidentiality of personal information." (emphasis added). 37 Am Jur 2d §240, states, "...the disclosure of a document will not constitute a clearly unwarranted invasion of personal privacy simply because it would invite a negative reaction or cause embarrassment in the sense that a position is thought by others to be wrong or inadequate." "Such documents may be exactly the ones intended to be exposed by the Freedom of Information Act." (emphasis added) To which, Schell v. United States Dept. of Health & Human Services, 843 F.2d 933 (6th Cir. 1988), is quoted as a source. Clearly Exemption 6, within the FOIA, exempts information involving personal privacy, not information related to possible professional matters. Especially when they directly relate

to medical care received or to be received by a patient. To verify a physicians ability to effectively do his or her job would not constitute an invasion of privacy. As stated in E.P.A. v. Mink, 410 U.S. 73, 86, 93 S.Ct. 827, 837 (1973), exemption not shielded from purely factual, investigative matters. In addition, Chamberlain v. Alexander, 419 F. Supp. 235(5th Cir. 1976), held that career and personnel data held is not exempt, including a letter of reprimand.

2. Also cited in Mr. Burlington's letter was Title 5 USC § 552(7)(c), which exempts from disclosure records or information compiled for law enforcement purposes. Accord, RCA Global Communications v. F.C.C., 524 F. Supp. 579 (1981), In order to justify the withholding of information on the ground that its disclosure would impede some future investigation, however, an agency must show that the relevant investigation is likely to occur, and not merely that there is the possibility of such an investigation. The Uniform Information Practices Code § 2-103(a)(1)(i), states that the only way to withhold information under such provision is if the disclosure would materially impair the effectiveness of an ongoing investigation, criminal intelligence operation, or law enforcement proceeding. Addition ally, citing Johnson v. U.S. Dept. of Justice, 739 F.2d 1514 (10th Cir. 1984), the Court held that under Exemption 7(C) balancing test, the initial inquiry is whether there is a serious invasion of privacy; if not, the Freedom of Information Act policy mandates disclosure. It further states, While personal information is usually not in the public interest, examples of strong public interests include monitoring the conduct and actual performance of public officials, rooting wrongdoing by public employees... When documents concerning an internal federal agency investigation are sought, the public may have an interest in knowing that a government investigation itself is comprehensive, the report or investigation itself was comprehensive, the report is accurate, any disciplinary measures imposed are adequate, and those who are accountable are dealt with in an appropriate manner. see Stern v. FBI, 237 US App. DC 302, 737 F.2d 84 (D.C. Cir. 1984).

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contained in the (NPDB) is not personal in nature, but, conversely, related specifically to a public employee's education, training and background, hence, it is extremely useful, and perhaps the best determination of the level or lack of expertise. As stated in the Uniform Information Practices Code 3-101(1), information related to an agency's present or former employees regarding work experience, background, training and education does not qualify for the personal privacy exemption.

The courts have long held that medical care afforded to prisoners should be 'adequate'. 'Adequate' is generally understood to mean fitting or equal to need. Based on my personal experience with doctors Growse and Dankwa, I have found medical expertise and practice is sorely lacking both in scope and application. The obvious best method to validate or annul such deductions would be to release information not related to home address, social security number, and other such information that is personal in nature.

The Bureau of Prisons (BOP), in their Health Services Manual (HSM), states it shall employ only "qualified management personnel" in matters involving inmate health and safety. Again, citing Johnson v. U.S. Dept. of Justice, 739 F.2d 1514, 1519 (10th Cir. 1984), "...a strong public interest does exist in monitoring the conduct and actual performance of public officials. See e.g., Baez, 647 F.2d 1339." Obvious prudence would dictate that if one were being treated by a certain physician, in order to be better able to trust their professional judgment; information that was important to the BOP in hiring them, is also quite pertinent to those being

treated by him or her. Citing Johnson again, it clearly expresses that the public interest is best served when it is able to verify the accuracy and comprehensiveness of reports within an agency's files. 37A Am Jur 2d § 323, states: "The level of responsibility held by federal law enforcement employee, as well as the activity for which such an employee has been censured, are appropriate considerations for determining the extent of the public's interest in knowing the identity of the employee." subnote, Stern. In this case, the name is of no importance since it is already known by the inmates being treated by that physician.

Physicians, according to the (HSM), Chapter II, page 1, states, "Bureau policy is to provide necessary medical care consistent with community standards." (emphasis added). In comparing care received by inmates with care from physicians in the community, one needs some basis with which to make that determination. Generally an acceptable method to test how well a physician has upheld his or her duties to his patients is to know if past care to such patients was "adequate". Typically, complaints are not lodged or malpractice judgments paid if a patient deems a physician's care is 'adequate'. Such activities are usually only triggered by mistakes or errors in medical judgment for 'inadequate' treatment.

The BOP's HSM, Chapter XII, section 1, under "Mission Statement", declares that it wishes to, "Do the right thing [1]", and "Doing the right thing well [2]". Followed by "Professional Credentials and Privileges" as number 3 and "Patient Rights and Organizational Ethics" as number 4. If these statements or Mission is to be anything more than just words on a page, they must be backed by the action those words intone. I am only requesting that the BOP do what they attest to desire to do based on their own Mission Statement.

In summation, the HSM, Chapter I, section 2, page 1, states: "On occasion, there may be an incompatibility between medical and correctional guidelines; conflicts related to medical care should be resolved, as far as practical, in favor of medicine."

05-cv-00556-RMU Document 1-1 Filed 03/18/05 Page 5 of 9

bank in California; all malpractice payments; all past disciplinary actions taken or threatened to be taken against above named doctors; all information in the NPDB not related to home address or social security number of above named doctors; all information related to "Granting of Privileges" or denial of same along with form BP-S601.063 for each doctor; any information regarding above named doctors related to condition or standing of professional licensure, privilege statements or removal or denial of same; specific information related to medical complaints filed against above named doctors.

Please note: Disclosure of a public employee's professional qualifications in not considered an unwarranted invasion of privacy, according to: Eskeaton Monterey Hospital v. Myers, 134 Cal. App. 3d 788 (3rd Dist.).

For any reason you choose not to send any part of the information requested, then please furnish me with a "Vaughn Index" as set forth in Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973). Please be aware of the fact that because Exemption 7(C) requires that the court balance the privacy interests of the persons mentioned in the documents in question with the public interest for disclosure, specific, detailed Vaughn affidavits are especially critical in

Clearly, information that is known to the public is not exempt from disclosure. The fact that information is contained in a document does not make it exempt from disclosure. The fact that information is contained in a document does not make it exempt from disclosure. The fact that information is contained in a document does not make it exempt from disclosure.

supporting the exemption. See U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press, 489 US 749 (1989). Be aware also that, pursuant to Maynard v. CIA, 985 F.2d 547 (1st Cir. 1993), the Court held that the Government, "under the FOIA retains at all times the burden of proving exempt status of withheld documents."

Please consider this a first party request. The information requested will not be used for any commercial purposes.

In the event that some of the material is considered by you to be exempt from disclosure under both Acts, then please include all segregated portions of documents and the specific exemption upon which you are relying to deny disclosure of the excised portions.

I am requesting that you abide by the statutory time in which to make a determination on this request, that being (20) twenty working or business days from the date of receipt under section 552(a)(6)(A)(i) of Title 5 of the U.S. Code.

I am requesting a fee waiver or at least a fee reduction, however, in the event that you deny this request for a fee waiver, I hereby agree to pay reasonable search and duplication fees pursuant to 5 USC § 552(a)(4)(A)(ii) through subsection (vii), while retaining my right to appeal your denial of waiver.

This is an action under the Freedom of Information Act (FOIA), 5 USC, and the Privacy Act of 1974 (PA), 5 USC § 552 & § 552(a).

This 6th page, the prior 5 pages, and the following page 7, the signature page, complete this FOIA/PA request.

-7-

I Duff, swear under penalty of perjury that I am requesting all information on the prior 6 pages for my own use. It will not be used for any commercial purposes.

DATED: 8/5/04

STATE OF KENTUCKY

COUNTY OF FAYETTE

BEFORE ME, A NOTARY PUBLIC, on this day personally appeared known to me to be the person whose name is subscribed above and, being by me first duly sworn, declared that the information above and on the preceeding pages is true and correct.

Given under my hand and seal of Office this 5 day of August, 2004.

Sandra Alston
Notary Public

My commission expires: 06-28-2006

-2-

In addition, in Chapter XII, page 13, section 11, subsection a, it states that medical personnel shall submit for verification of credentials/status several other items, I wish to have copies of these items pursuant to the same Act(s) referred to in my first paragraph.

5. All malpractice history;
6. All past disciplinary actions;
7. All information not related to home address, social security number in the National Practitioner Data Bank (NPDB);
8. All information related to "Granting of Privileges" referred to in above noted chapter, page, section, and subsection;
9. A copy of Dr. Dankwa's form BP-S601.063;
10. A copy of Dr. Growse's form BP-S601.063;
11. According to Chapter XII, page 20, section 12, subsection d, number (4), "The (HSD) Health Services Director shall report the names of physicians, dentists, and other health care practitioners to the NPDB and appropriate SLB (State Licensing Board) according to the requirements outlined in this Program Statement. This includes reporting payment of malpractice settlements made in whole or in part of a claim or a judgments (sic) against a practitioner and adverse actions on clinical privileges."

This request stems from a question I asked Dr. Dankwa yesterday. I simply asked her, from where did she graduate? She said it was none of my business and if I wanted to know, I would have to file a Freedom of Information Act form and follow the stipulated procedures. That is what I am doing at this time. I am only doing exactly what she recommended that I do.

The courts have long held that as long as the medical care afforded a prisoner is "adequate", that is all that is required. I simply wish to verify status to determine if said care is adequate. If status is not "adequate", inmates have the option of refusing medical care and the only possible way to make such a determination is by credentials, and professional status.

June 30, 2004

Federal Medical Center
3301 Leestown Road
Lexington, KY 40511

RE: Freedom of Information Act Request

Dear Sirs/Madam:

Pursuant to the Freedom of Information Act, 5 USC §552, and the Privacy Act of 1974, 5 USC §552(a), I hereby request copies of the following documents and information noted below, in any way or manner.

According to the "Admissions and Orientation Handbook", page 49, paragraph 5; all inmates have the right to know the name and professional status of health care providers supplying them with medical services. Status is generally understood to mean: 1. the relative social, professional, or other standing of someone or something; 2. the position of affairs at a particular time, esp. in political or commercial contexts. [2001-2002 Edition, New Oxford American Dictionary] 3. position, rank, standing, or degree.

In order to verify degree, and in turn status, I need to know what professional training my health care provider has. The persons involved are Drs. Dankwa and Growse. The information requested should include:

1. Name of college attended;
2. Name and rank in medical school attended;
3. Facility where "pre-med" was recieved;
4. In addition, according to the "Health Services Manual"; Chapter I, page 2, section 3, it states: the Bureau [of Prisons] shall employ "qualified management personnel". I simply wish to verify the credentials of such personnel as related to my care.

-4-

Please note: Disclosure of a public employee's professional qualifications is not considered an unwarranted invasion of privacy, according to: Eskaton Monterey Hospital v. Myers, 134 Cal. App. 3d 788 (3rd Dist.).

The Uniform Information Practices Code explicitly lists the education and training background and previous work experience relating to an agency's present or former officers and employees as information that does not qualify for the personal privacy exemption. Uniform Information Practices Code § 3-101(1).

As stated in Environmental Protection Agency v. Mink, 410 U.S. 73, 86, 93 S.Ct. 827, 837 (1973), exemption from disclosure not shielded from purely factual, investigative matters. Chamberlain v. Alexander, 419 F. Supp. 235 (5th Cir. 1976), held that career and personnel data held is not exempt, including a letter of reprimand.

I, [Signature], hereby swear under penalty of perjury that I am requesting all the above information or documents for my personal use.

DATED: 7/6/04

STATE OF KENTUCKY

COUNTY OF FAYETTE

BEFORE ME, A NOTARY PUBLIC, on this day personally appeared, known to be the person whose name is subscribed above and, being first duly sworn, declared that the information above and on the preceding pages is true and correct.

Given under my hand and seal of Office this 2 day of July, 2004.

[Signature]
Notary Public

My Commission Expires: 06-28-2006

Please send information to:

David A. Cawthon
87244-020
P.O. Box 14500
Lexington, KY 40512-4500

-3-

If for any reason you choose not to send any part of the information or documents requested, then please furnish me with a "Vaughn Index" as set forth in Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973). But see Maynard v. CIA, 985 F.2d 547 (1st Cir. 1993), which held that the Government, "Under the FOIA retains at all times the burden of proving exempt status of withheld documents."

Please consider this a first party request under the FOIA, 5 USC § 552 and the Privacy Act, 5 USC § 552a. The information requested will not be used for any commercial purpose.

In the event that some of the material is considered by you to be exempt from disclosure under both Acts, then please include all segregated portions of documents and the specific exemption upon which you are relying to deny disclosure of the excised portions. Please note, that in order to avoid disclosure, you must claim an appropriate exemption under both Acts.

I am requesting that you abide by the statutory time in which to make a determination on this request, that being (20) twenty working or business days from the date of receipt under section 552(a)(6)(A)(i) of Title 5 of the U.S.C.

I request a fee waiver or at least a fee reduction, however, in the event that you deny this request for a fee waiver, I hereby agree to pay reasonable search and duplication fees pursuant to 5 USC § 552(a)(4)(A)(ii) through subsection (vii), while retaining my right to appeal your denial of waiver.

This is an action under the Freedom of Information Act (FOIA), 5 USC 552, and the Privacy Act of 1974 (PA), 5 USC 552a.

(signature page follows on page 4.)

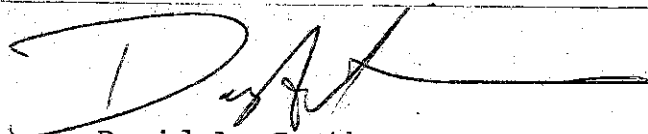
CERTIFICATE OF SERVICE

I, David A. Cawthon declare under penalty of perjury that on 2/24/05, I served a true and correct copy of the attached motion to the parties listed below, by placing said copies in a postage paid, first class mail envelope and depositing said envelope with the Mail Room Officials at the Federal Medical Center, Lexington, Kentucky, pursuant to Houston v. Lack, 487 U.S. 266, 270 (1988).

Parties Served:

Federal Bureau of Prisons
320 First Street N.W.
Washington, DC 20534

U.S. Department of Justice
Office of Information and Privacy
Flag Building, Suite 570
Washington, DC 20530



David A. Cawthon
87244-020
Federal Medical Center
Comm. North Unit
P.O. Box 14500
Lexington, KY 40512-4500